

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL SHAWN HOULIHAN,

No. CV-07-266-LRS

Plaintiff,

**ORDER GRANTING
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

v.

CITY OF LIBERTY LAKE, et al.,

Defendants.

BEFORE THE COURT is the Defendants' Motion For Partial Summary Judgment (Ct. Rec. 27). Telephonic oral argument was heard on October 30 and November 5, 2008. Douglas D. Phelps, Esq., appeared for Plaintiff. Michael E. McFarland, Esq., appeared for Defendants.

For the reasons provided at both hearings, the court finds that to the extent Plaintiff seeks a Fed. R. Civ. P. 56(f) continuance, that request is **DENIED** because Plaintiff has not "proffer[ed] sufficient facts to show that the evidence sought exists and that it would prevent summary judgment." *Nidds v. Schindler Elevator Corp.*, 113 F.3d 912, 921 (9th Cir. 1996).¹ Based on the undisputed facts and the record before it, the court finds that Plaintiff has failed to raise a genuine

¹ To the extent Plaintiff has requested a Fed. R. Civ. P. 6(b)(1) enlargement of time to respond to Defendants' motion, that request would be denied for the same reason, in addition to the fact that Plaintiff's response to Defendants' motion was untimely in the first instance (not filed within 11 calendar days per LR 7.1(c)).

1 issue of material fact that: 1) Defendants City of Liberty Lake and the Liberty
2 Lake Police Department had a policy or custom which caused the constitutional
3 violation alleged by Plaintiff; and 2) that Defendant Liberty Lake Police Chief
4 Brian Asmus personally participated in the alleged constitutional violation by
5 certain action or inaction in the training, supervision, or control of Defendant
6 Liberty Lake Police Officer Mike Thomas. Accordingly, Defendants' Motion For
7 Partial Summary Judgment (Ct. Rec. 27) is **GRANTED** and Defendants City of
8 Liberty Lake, Liberty Lake Police Department, and Liberty Lake Police Chief
9 Brian Asmus are awarded judgment on the 42 U.S.C. Section 1983 claims asserted
10 against them by Plaintiff.

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter
12 this order and provide copies to counsel of record.

13 **DATED** this 6th day of November, 2008.

14 *s/Lonny R. Suko*

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16 LONNY R. SUKO
17 United States District Judge
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